



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## DECISION

### Dispute Codes:

ET and FF

### Introduction

This hearing was scheduled in response to the Landlord's Application for Dispute Resolution, in which the Landlord has made application for an Order of Possession, for an early end to the tenancy, and to recover the filing fee from the Tenants for the cost of this Application for Dispute Resolution.

The Witness for the Landlord #1 stated that on March 23, 2011 he personally served copies of the Application for Dispute Resolution, Notice of Hearing, and associated evidence to a male who appeared to be approximately twenty-six years of age, who advised him that he lived in the rental unit.

The Witness for the Landlord #1 stated that on March 24, 2011 he personally served copies of the Application for Dispute Resolution, Notice of Hearing, and associated evidence to the female Tenant with the initials "T.L.". On the basis of the evidence of this witness, I find that these documents have been served to all three Tenants in accordance with section 89(2)(a) and 89(2)(c) of the *Residential Tenancy Act (Act)*, however the Tenants did not appear at the hearing.

The Landlord submitted copies of the documents that were served to the female Tenant on March 24, 2011 to the Residential Tenancy Branch. In the absence of evidence to the contrary I accept that these documents were served upon the Tenants and they were accepted as evidence for these proceedings. While all evidence has been reviewed and considered, it has not necessarily been referenced in this decision.

### Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to end this tenancy early, for an Order of Possession and to recover the filing fee from the Tenants for the cost of the Application for Dispute Resolution, pursuant to sections 56 and 72 of the *Act*.

### Background and Evidence

The Landlord submitted a written tenancy agreement that shows he entered into a written tenancy agreement with the Respondent with the initials "T.L.". This individual

appears to have signed the tenancy agreement but her signature causes me to believe that her name is misspelled on the tenancy agreement. At the hearing the Landlord declared that the name is misspelled on the Application for Dispute Resolution and the Application has been amended to reflect the Tenant's proper name.

The written tenancy agreement shows that the Landlord entered into a written tenancy agreement with an individual with the initials "J.L.", who signed the tenancy agreement. I note that this individual's name is spelled differently on the Application for Dispute Resolution although this Tenant appears to be the individual named in the Application for Dispute Resolution. At the hearing the Landlord declared that the name is misspelled on the Application for Dispute Resolution and the Application has been amended to reflect the Tenant's proper name.

The written tenancy agreement does not name the Respondent with the initials "L.J.", although she has signed the tenancy agreement.

The written tenancy agreement shows that the tenancy began on December 16, 2010 and that the Tenants agreed to pay monthly rent of \$1,500.00 on the first day of each month.

The Witness for the Landlord #2 stated that he is the owner and occupant of the residence located directly above the Tenants' rental unit. He stated that he became aware that the Tenants had moved into the rental unit shortly after Christmas of 2010; that since they moved into the rental unit he has noticed a significant number of "strange people" in the residential complex; that he hears various noises coming from the rental unit almost every night, which includes screaming, yelling, items breaking, music, and slamming of doors; that he has phoned the police dozens of times regarding the disturbances; that the noise frequently keeps him awake all night; that he believes one of the Tenants is working as a sex trade worker in front of the building; that it appears there are approximately eight people living in the rental unit, some of whom do not have keys; that the people who do not have keys have to "sneak" into the complex by waiting for an occupant of the complex to open the door; that they frequently smell marijuana inside their rental unit which he believes is emanating from the Tenants' unit; that as a result of the nightly noise he and his family have vacated their home; and that they will not return to their home until this rental unit has been vacated.

The Witness for the Landlord #3 stated that he is an occupant of the residential complex and the president of the Strata Council for the complex. He stated that the Strata Council received 14 formal complaints of suspicious activity, 6 reports of doors being propped open, 13 noise complaints, and 3 complaints of a vicious dog since this tenancy began. He stated that the Strata Corporation has hired a security company in response to the concerns that have been expressed and that since this company has been hired the Tenant(s)' dog has bitten one of the security guards. He stated that the strata corporation has provided the Tenants and the Landlord with multiple written and verbal warnings, none of which appears to have impacted the disturbances. He stated

that the Strata Corporation has levied fines totalling \$1,000.00 for bylaw infractions arising from the actions of these Tenants.

The Witness for the Landlord #4 stated that she lived beside the rental unit until February 26, 2011, at which time she vacated the rental unit as a result of the disturbances caused by these Tenants. She stated that she has observed activity outside of the residential complex that has caused her to conclude that the Tenant(s) and/or their guests are engaged in the sex trade; that people she believes are sex trade workers frequently came and went from the rental unit; that on one occasion her boyfriend refused access to the residential complex to a woman he believed was a sex trade worker and that woman spit at him; that every night they were disturbed by noise coming from the rental unit ; and that sometimes the noise disturbances continued all night.

The Witness for the Landlord #5 stated that she lives in the residential complex and that at approximately 7 p.m. on February 09, 2011 she observed one of the female Tenants having sex in the stairwell of the residential complex, and that on at least two occasions she has observed one of the Tenants propping open an exterior door in a manner that provides access to the complex.

The Landlord stated that he has been aware of the problems with the rental unit since December 24, 2010 and that he has spoken with the Tenants and advised them that they are disturbing other occupants of the residential complex. He stated that on March 10, 2011 he served the Tenants with a One Month Notice to End Tenancy for Cause, which declared that they must vacate the rental unit by April 15, 2011. He stated that earlier today he and the Tenant signed a mutual agreement to end this tenancy on March 31, 2011. Legal Counsel for the Strata Corporation expressed concerns that the Tenants may not abide by this mutual agreement.

### Analysis

Based on the evidence submitted by the Landlord and in the absence of evidence to the contrary, I find that the Landlord entered into a tenancy agreement with the three Respondents named on the Application for Dispute Resolution, which requires them to pay monthly rent of \$1,500.00.

Section 56(1) of the *Act* stipulates that a landlord can apply for an order that ends the tenancy on a date that is earlier than the tenancy would end if a notice to end tenancy were given under section 47 of the *Act* and he may apply for an Order of Possession for the rental unit.

Section 56(2)(a) of the *Act* authorizes me to end the tenancy early and to grant an Order of Possession in any of the following circumstances:

- The tenant or a person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property
- The tenant or a person permitted on the residential property by the tenant has seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant
- The tenant or a person permitted on the residential property by the tenant has put the landlord's property at significant risk
- The tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has caused or is likely to cause damage to the landlord's property
- The tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property
- The tenant or a person permitted on the residential property by the tenant has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord
- The tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to the residential property.

After considering all of the evidence presented by the Landlord, I am satisfied that the Tenants are unreasonably disturbing other occupants of the rental unit and that the Landlord has grounds to end this tenancy pursuant to section 56(2)(a)(i) of the *Act*. In the absence of evidence to the contrary, I accept that the Tenant(s) are regularly and continually disturbing others by making excessive noise, propping open doors to the rental unit on at least two occasions, using marijuana, and having sex in the stairwell on at least one occasion. I find that these disturbances have persisted in spite of verbal and written warnings provided to the Tenants.

Section 56(2)(b) if the *Act* authorizes me to grant an Order of Possession in these circumstances only if it would be unreasonable, or unfair to the landlord or other occupants of the residential property, to wait for a notice to end the tenancy under section 47 to take effect. In these particular circumstances I find that the disturbances are so significant and so frequent that it would be unreasonable to other occupants of the residential complex to wait until the effective date of the One Month Notice to End Tenancy that was served to the Tenants.

In reaching the conclusion that it would be unreasonable to wait until the effective date of the One Month Notice to End Tenancy, I find that the effective date of the One Month Notice to End Tenancy is actually April 30, 2011, not April 15, 2011 as is allegedly declared on the One Month Notice to End Tenancy.

Section 47(2) of the *Act* stipulates that a One Month Notice to End Tenancy for Cause must end the tenancy effective on a date that is not earlier than one month after the date the notice is received and the day before the day in the month that rent is payable under the tenancy agreement. As the Landlord stated that the One Month Notice to End Tenancy was served on March 10, 2011 and rent is due on the first of each month, the earliest effective date of this Notice is April 30, 2011. I find this an unreasonable delay given the severity of the disturbances being caused by the Tenants.

In reaching the conclusion that it would be unreasonable to wait until the effective date of the One Month Notice to End Tenancy, I was heavily influenced by the evidence of two occupants of separate suites, who stated that they have vacated the residential complex as a result of the behaviour of the Tenants, one of whom is waiting to move back into the rental unit after the Tenants vacate their unit. I find it highly unusual for occupants of a residential complex to vacate their homes as a result of disturbances caused by other occupants, particularly when they own their home, which causes me to believe that these disturbances are extraordinary. I find that delaying the end of this tenancy until April 30, 2011 would be extremely unfair to the home owner who has been temporarily displaced from his home.

In reaching the conclusion that it would be unreasonable to wait until the effective date of the One Month Notice to End Tenancy, I was further influenced by the evidence of the witness who observed one of the Tenants having sex in the stairwell at 7 p.m. at night. I find that this behaviour demonstrates a complete disregard for other occupants who have access to this common area and causes me to believe that the Tenant(s) will likely continue to disturb other occupants for the remainder of their tenancy.

In reaching the conclusion that it would be unreasonable to wait until the effective date of the One Month Notice to End Tenancy, I was further influenced by the testimony of the Strata Corporation president who stated that the Strata Corporation has hired a security company as a result of the disturbances. I find that this is a significant expense for a Strata Corporation, which causes me to believe that the disturbances caused by these Tenant(s) are extraordinary.

In reaching the conclusion that it would be unreasonable to wait until the effective date of the One Month Notice to End Tenancy, I was further influenced by the testimony of the Strata Corporation president who stated that the a security guard hired by the Strata Corporation has been bitten by the Tenant(s)' dog. I find that the Tenant(s) dog poses a potential threat to occupants of the residential complex.

### Conclusion

Based on these findings I grant the Landlord an Order of Possession that is effective ten days after it is served upon the Tenants. This Order may be served on the Tenant, filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

In determining the effective date of the Order of Possession, I determined that it was prudent to provide the Tenants with a reasonable amount of time to find alternate

accommodations, given that they would have been afforded a full month's notice if the Landlord had acted more responsibly in attempting to end this tenancy pursuant to section 47 of the *Act*.

I find that the Landlord has established a monetary claim, in the amount of \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution and I grant the Landlord a monetary Order in that amount. In the event that the Tenant does not comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia Small Claims Court and enforced by that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: March 31, 2011.

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Residential Tenancy Branch